

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Universal Service High-Cost Filing)	WC Docket No. 08-71
Deadlines)	
)	
Petition of Virgin Islands Telephone)	
Corp. d/b/a Innovative Telephone for)	
Waiver of the National Exchange)	
Carrier Association Adjustment Period)	

**REPLY COMMENTS OF VIRGIN ISLANDS TELEPHONE CORP. D/B/A
INNOVATIVE TELEPHONE**

On December 19, 2011, the Virgin Islands Telephone Corp. d/b/a Innovative Telephone (“Innovative”) petitioned the Commission to waive the National Exchange Carrier Association’s (“NECA”) rolling 24-month adjustment period and require that NECA recalculate Innovative’s 2011 High Cost Loop Support (“HCLS”) based on correct loop count data, and distribute the additional support resulting from this recalculation at the next available opportunity.¹ Innovative respectfully submits this reply to the comments of NECA, which is the only party that filed comments in response to Innovative’s Petition.²

Notably, NECA does not oppose the Petition. In fact, NECA explains that it “understands Innovative’s unfortunate circumstance to discover an error in its HCLS loop count

¹ See *Virgin Islands Telephone Corp. d/b/a Innovative Telephone Petition for Waiver of the National Exchange Carrier Association’s Adjustment Period for Calculating High Cost Loop Support*, WC Docket No. 08-71 (filed December 19, 2011) (“Petition”).

² See *Comments of the National Exchange Carrier Association, Inc.*, WC Docket No. 08-71 (filed Jan. 23, 2012) (“NECA Comments”).

data and have limited recourse to correct it.”³ NECA does raise two issues, however, to which Innovative is compelled to respond.

First, NECA states that if Innovative receives its corrected funding “all other rural ILECs must cumulatively refund a proportionate amount so that the HCLS fund does not increase in size beyond the cap.”⁴ While true, this statement ignores the importance of using accurate data in establishing universal service support and overstates the waiver’s impact on other rural carriers.

NECA does not dispute that a waiver is necessary to ensure that Innovative’s HCLS—as *well as all other carriers’ HCLS*—is determined based on accurate rather than inaccurate data. The Commission repeatedly has emphasized the importance of accurate data in implementing the programs it oversees.⁵ This is particularly true in the context of the federal universal service program, since the principles embodied in Section 254 will not be achieved if universal service funding is calculated based on erroneous data that results in less support than would otherwise be warranted.⁶

³ NECA Comments at 7.

⁴ *Id.* at 5-6.

⁵ See, e.g., *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 6012, ¶ 14 (2010) (“Accurate call data are essential to ensuring the integrity of the [Video Relay Service] Fund”); *Bell Atlantic/NYNEX Merger Order Performance Monitoring Reports*, 14 FCC Rcd 7485, ¶ 2 (1999) (granting waiver to extend the time for filing performance data, recognizing “the critical importance of filing accurate data ...”); *Commission Requirements for Cost Support Material To Be Filed With January 1, 1990, Access Tariff Revisions*, Memorandum Opinion and Order, 4 FCC Rcd 7204, ¶¶ 13-19 (1989) (granting waivers of tariff data filing requirements because of the importance of the Commission having “accurate data”).

⁶ Just last year, the FCC sent a letter to Regina McNeil, the General Counsel of NECA, asking NECA to provide the Commission with “complete and accurate” carrier-specific data, which the Commission viewed as a “key” input in its review of various USF reforms. *Regina*

Additionally, the financial impact on other rural carriers if the Commission were to grant the waiver is minimal. An examination of USAC reports of projected HCLS funding for rural study areas for each of the four calendar quarters of 2011 reveals that HCLS flowing to rural study areas for the Year 2011 is projected to be \$1,225,143,132.⁷ Of this total, the \$540,000 in additional HCLS that would flow to Innovative for 2011 if the Commission grants the Petition represents approximately 0.044%. These same reports identify that, on average, there were 1,682 rural study areas receiving HCLS in 2011, including Innovative. Thus, the average impact in projected annual 2011 HCLS funding on other rural study areas if Innovative's Petition is granted amounts to less than \$325.00. That rural ILECs may have to refund a few hundred dollars to which they are not otherwise entitled cannot justify the use of data that no one disputes is inaccurate and should not be the basis of universal service support calculations.

Furthermore, the relatively small loss in funding for other HCLS recipients would pale in comparison to the considerable harm that would befall Innovative and ultimately the residents of

(footnote cont'd.)

McNeil, Letter, 26 FCC Rcd 4968 (2011); see also *In re Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, First Order on Reconsideration, 17 FCC Rcd 5635, ¶ 10 (2002) (extending the ICLS filing deadline to provide rate-of-return carriers with "sufficient time to prepare and submit the necessary data" because "[i]mplementation of the ICLS mechanism and calculation of ICLS support depend[ed] on the submission of complete and accurate data").

⁷ \$1,225,143,132 is the sum of projected quarterly high cost loop funding for the four quarters of 2011 as reported in the following USAC reports filed with the FCC: "HC01- High Cost Support with Capped CETC Support Projected by State by Study Area - 1Q2011", <http://www.usac.org/about/governance/fcc-filings/2011/quarter-1.aspx>; "HC01- High Cost Support with Capped CETC Support Projected by State by Study Area - 2Q2011", <http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx>; "HC01- High Cost Support with Capped CETC Support Projected by State by Study Area - 3Q2011", <http://www.usac.org/about/governance/fcc-filings/2011/quarter-3.aspx>; "HC01- High Cost Support with Capped CETC Support Projected by State by Study Area - 4Q2011", <http://www.usac.org/about/governance/fcc-filings/2011/quarter-4.aspx>.

the United States Virgin Islands (“USVI”) absent a waiver. In stark contrast to the less than \$325.00 in refunds that may be required in other rural study areas, Innovative would lose more than \$1 million in universal service support in 2011 and 2012 if the Commission were to deny the Petition.⁸ A loss of this magnitude would greatly strain Innovative’s ability to meet the communications needs of the residents of the USVI.

Second, NECA correctly points out that, “[i]f the Commission directs NECA to open the 24-month settlement window, Innovative’s increased Common Line revenue requirement underlying their revised 2009 cost study would be reported to the pool, and additional Interstate Common Line Support (ICLS) will also be processed through NECA’s Common Line pool to offset the increased Common Line revenue requirement.”⁹ For reasons that are not clear, however, NECA goes on to state that:

Had Innovative also been in NECA’s Traffic Sensitive (“TS”) pool during 2009, there would have been a corresponding decrease reported in TS revenue requirements, reducing TS settlements. Since Innovative was not in NECA’s TS pool during 2009, NECA does not have the ability to reflect the decreases in TS revenue requirements and settlements corresponding to their Common Line changes.¹⁰

While it is true that Innovative was not a member of the TS pool in 2009, Innovative has not been a member of the TS pool for over 20 years as it participated in the Common Line pool during that entire period. For more than 20 years, Innovative has made various adjustments to its

⁸ Absent a waiver, Innovative stands to lose approximately \$540,000 in reduced HCLS for 2011 and an additional \$540,000 in 2012 given the Commission’s decision to freeze high-cost support for 2012 based on 2011 support levels. Petition at 8; *see also Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, ¶ 133 (2011) (freezing high cost support at 2011 support levels).

⁹ NECA Comments at 6.

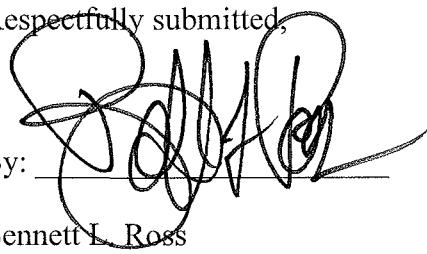
¹⁰ *Id.* at 6-7.

Common Line revenue requirements that NECA did not have the ability to reflect in TS revenue requirements and settlements by virtue of the fact that Innovative was not participating in the TS pool. NECA provides no explanation as to why its inability to reflect the adjustments resulting from the particular Common Line revenue requirement at issue has such sudden relevance under the circumstances. Accordingly, NECA's concern regarding the TS pool is irrelevant to Innovative's waiver request.

* * *

Innovative and NECA both agree that the Commission is well within its authority to waive the 24-month adjustment window, require that NECA recalculate Innovative's HCLS support for January through October 2011, and require that NECA distribute this additional support at the next available opportunity.¹¹ For the reasons explained in Innovative's Petition, "good cause" exists to grant the waiver, and nothing in NECA's Comments can or should be construed otherwise. Accordingly, the Commission should grant Innovative's Petition.

Respectfully submitted,

By: 

Bennett L. Ross
Steven E. Merlis
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000
Counsel for the Virgin Islands Telephone
Corp. d/b/a Innovative Telephone

February 7, 2012

¹¹ Petition at n. 18; NECA Comments at 6.